

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CF1466
)	EEOC NO.: 21BA92859
ROSA VILLANUEVA)	ALS NO.: 09-0724
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen presiding, upon Rosa Villanueva's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2009CF1466; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On November 14, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged in her charge that Agri-best Holdings, LLC d/b/a Protein Solutions, LLC, ("Employer"), failed to reasonably accommodate her physical disability, Hodgkin's Lymphoma (Count A), and discharged her because of her disability (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On November 12, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On December 15, 2009, the Petitioner filed this timely Request.
2. On April 26, 2006, the Employer hired the Petitioner as a Butcher.
3. In January 2008, the Petitioner was diagnosed with Hodgkin's Lymphoma. On February 5, 2008, the Petitioner requested the Employer grant her a leave of absence so that she could obtain treatment for her medical condition. On February 5th, the Employer authorized the Petitioner to take a leave of absence pursuant to the Family Medical Leave Act (FMLA). The

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

Employer also gave the Petitioner an additional 30 days leave beyond the twelve weeks leave provided by FMLA. The Petitioner's leave of absence expired on June 6, 2008.

4. As of June 6, 2008, the Petitioner's doctor had not cleared the Petitioner to return to work. On June 6th, the Petitioner contacted the Employer and requested an indefinite extension of her medical leave.
5. The Employer denied the Petitioner's request for an indefinite extension of her medical leave. Thereafter, on June 6, 2008, the Employer discharged the Petitioner because she could not perform the functions of her job and she could not return to work. The Employer told the Petitioner she could re-apply for her position once her condition improved.
6. In Count A of her charge, the Petitioner alleged the Employer failed to reasonably accommodate her physical disability when on June 6, 2008, it denied her request for an indefinite medical leave. In Count B, the Petitioner alleged the Employer discharged her on June 6th because of her physical disability.
7. In her Request, the Petitioner argues that in September 2008 and December 2008, once she was able to work, she attempted to reapply for her position with the Employer. The Petitioner states that in September 2008, the Employer would not give her an employment application. Further, on December 4, 2008, the Petitioner contends one of the Employer's representatives said no employment applications were being given out. However, the Petitioner claims that on that same day, December 4th, the Petitioner sent her daughter to the Employer to ask for an application, and her daughter was given an employment application.
8. In its Response, the Respondent requests that the Commission sustain dismissal of the Petitioner's charge for lack of substantial evidence. As to Count A, the Respondent argues that under the Act, an indefinite extension of the Petitioner's medical leave from work would not have constituted a reasonable accommodation because the extended leave would not have permitted the Petitioner to perform the essential functions of her job. As to Count B, the Respondent argues the Petitioner was not disabled within the meaning of the Human Rights Act ("the Act"), at the time she was discharged because she was unable to perform the essential functions of her job with or without a reasonable accommodation.

Conclusion

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D) (West 2010). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

As to Count A, the Commission finds no substantial evidence that the Employer failed to accommodate the Petitioner's disability. While a reasonable accommodation for a disability may involve the modification of an employer's leave policy, see 56 Ill. Admin. Code § 2500.40(a) (West 2010), the Commission has held that an indefinite medical leave is not a reasonable accommodation for a disabled employee under the Act. See In the Matter of: Shirley Leevy, IHRC, Charge No. 1997SF0607, 2000 WL 33269854 (June 16, 2000). Therefore, the Petitioner's request for an indefinite extension of her medical leave would not qualify as a reasonable accommodation under the Act.

As to Count B, the Commission finds no substantial evidence the Petitioner was discharged on June 6, 2008, because of her disability. A condition constitutes a disability within the meaning of the Act when the condition is unrelated to the ability of the employee to perform the duties of his or her job. See 56 Ill. Admin. Code § 2500.20(a). On June 6, 2008, the Petitioner was admittedly unable to perform the essential functions of her job, with or without a reasonable accommodation. Therefore, there is no substantial evidence of a violation of the Act because the Petitioner was not disabled within the meaning of the Act on June 6, 2008.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Agri-best Holdings, LLC d/b/a Protein Solutions, LLC, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 23rd day of June 2010

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen